

§ 313.21

This subpart is consistent with the FCCS on administrative offset issued by the Department of Justice.

§ 313.21 Definitions.

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

(b) *Person* includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or any state or local government shall be excluded.

§ 313.22 Collection.

(a) The Director may collect a claim from a person by administrative offset of monies payable by the Government only after:

(1) Providing the debtor with due process required under this part; and

(2) Providing the paying agency with written certification that the debtor owes the debt in the amount stated and that the FDIC, as creditor agency, has complied with this part.

(b) Prior to initiating collection by administrative offset, the Director should determine that the proposed offset is within the scope of this remedy, as set forth in 31 CFR 901.3(a). Administrative offset under 31 U.S.C. 3716 may not be used to collect debts more than 10 years after the federal government's right to collect the debt first accrued, except as otherwise provided by law. In addition, administrative offset may not be used when a statute explicitly prohibits its use to collect the claim or type of claim involved.

(c) Unless otherwise provided, debts or payments not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under common law, or any other applicable statutory authority.

§ 313.23 Offset prior to completion of procedures.

The FDIC may collect a debt by administrative offset prior to the completion of the procedures described in § 313.25, if:

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(a) Failure to offset a payment would substantially prejudice the FDIC's ability to collect the debt; and

(b) The time before the payment is to be made does not reasonably permit completion of the procedures described in § 313.25. Such prior offsetting shall be followed promptly by the completion of the procedures described in § 313.25.

§ 313.24 Omission of procedures.

The FDIC shall not be required to follow the procedures described in § 313.25 where:

(a) The offset is in the nature of a recoupment (*i.e.*, the FDIC may offset a payment due to the debtor when both the payment due to the debtor and the debt owed to the FDIC arose from the same transaction); or

(b) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993), which provides that procedural protections under administrative offset do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act; or

(c) In the case of non-centralized administrative offsets, the FDIC first learns of the existence of a debt due when there would be insufficient time to afford the debtor due process under these procedures before the paying agency makes payment to the debtor; in such cases, the Director shall give the debtor notice and an opportunity for review as soon as practical and shall refund any money ultimately found not to be due to the U.S. Government.

§ 313.25 Debtor's rights.

Unless the procedures described in § 313.23 are used, prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(a) Written notification of the nature and amount of the claim, the intention of the Director to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;